

**CHAPTER I**  
**DEFINITIONS**  
**707 KAR 1:280**

**SECTION 1. DEFINITIONS**

**“Admissions and Release Committee (ARC)”** means a group of individuals described in 707 KAR 1:320 Section 3, that is responsible for developing, reviewing, or revising an Individual Education Program (IEP) for a child with a disability.

**“Adverse effect”** means that the progress of the child is impeded by the disability to the extent that the educational performance is significantly and consistently below the level of similar age peers.

**“Aging out”** means the age of the youth exceeds the mandated service age for a free appropriate public education (twenty-first birthday) and the school district is no longer required to provide special education and related services to the youth.

**“Application”** means a written request for funds which addresses requirements or terms to be met on a continuing basis in order for funds to be released or paid to or on behalf of the applicant.

**“Assistive technology device”** means any item, piece of equipment, or product system, whether acquired commercially, off the shelf, modified, or customized, that is used to increase, maintain, or improve the functional capabilities of a child with a disability.

**“Assistive technology service”** means any service that directly assists a child with a disability in the selection, acquisition, or use of an assistive technology device. This term shall include:

- (a) the evaluation of the needs of a child with a disability, including a functional evaluation of the child in the child’s customary environment;
- (b) purchasing, leasing, or otherwise providing for the acquisition of assistive technology devices by children with disabilities;
- (c) selecting, designing, fitting, customizing, adapting, applying, maintaining, repairing, or replacing assistive technology devices;
- (d) coordinating and using other therapies, interventions, or services with assistive technology devices, like those associated with existing education and rehabilitation plans and programs;
- (e) training or technical assistance for a child with a disability or, if appropriate, that child's family; and
- (f) training or technical assistance for professionals (including individuals providing education or rehabilitation services), employers, or other individuals who provide services to, employ, or are otherwise substantially involved in the major life functions of the child.

**“Autism”** means a developmental disability significantly effecting verbal and nonverbal communication and social interaction, generally evident before age three (3) that adversely affects a child’s educational performance. Other characteristics often associated with autism are engagement in repetitive activities and stereotyped movements, resistance to environmental change or change in daily routines, and unusual responses to sensory experiences. The term shall not apply if a child’s educational performance is adversely affected primarily because the child has an emotional-behavior disability.

**“Business day”** means Monday through Friday except for federal and state holidays, unless a holiday is specifically included in the designation of business day as in 707 KAR 1:370 Section 1.

**“Caseload for special classes”** means the number of children with disabilities assigned to a teacher of exceptional children for the purpose of providing individualized specially designed instruction and related services in a special class setting.

**“Case manager”** means an individual who is assigned to every child with an IEP. The case manager will track the delivery of all services and report to the KLEA representative in a timely manner if any service is not being delivered in accordance with the IEP. This person is usually the special education teacher.

**“Child with a disability”** means a child evaluated in accordance with 707 KAR 1:300, (Chapter 3 Child Find, Evaluation and Reevaluation), as meeting the criteria listed in this section for autism, deaf-blindness, developmental delay, emotional-behavior disability, hearing impairment, mental disability, multiple disabilities, orthopedic impairment, other health impairment, specific learning disability, speech or language impairment, traumatic brain injury, or visual impairment which has an adverse effect on the child’s educational performance and who, as a result, needs special education and related services.

**“Class size for resource classes”** means the number of children with disabilities assigned to a teacher of exceptional children per period, block, or the specified length of the time set by the individual school.

**“Collaboration”** means, for purposes of determining class size in 707 KAR 1:350, Section 2, (Chapter VII, Placement Decisions), a teacher of exceptional children works with children with disabilities in the regular classroom to provide specially designed instruction and related services.

**“Complaint”** means a written allegation that a local education agency (LEA) has violated a requirement of the Individuals with Disabilities Education Act (IDEA) or an implementing administrative regulation, and the facts on which the statement is based.

**“Compliance”** means the obligations of state or federal requirements are met.

**“Compliance monitoring report”** means a written description of the findings of an investigation, like on-site monitoring, citing each requirement found in non-compliance.

**“Conflict of interest”** means when it appears that the person being considered might benefit personally or professionally from decisions regarding the child or might be recruited to make decisions which might affect policy in which the person has a personal or professional interest.

**“Consent”** means:

- (a) A parent has been fully informed of all information relevant to the activity for which consent is sought, in his native language, or other mode of communication;
- (b) A parent understands and agrees in writing to the carrying out of the activity for which his consent is sought, and the consent describes the activity and lists the records, if any, that will be released and to whom; and
- (c) A parent understands that the granting of consent is voluntary on the part of the parent and may be revoked at any time; and
- (d) If a parent revokes consent, that revocation is not retroactive (i.e., it does not negate an action that has occurred after the consent was given and before the consent was revoked).

**“Controlled substance”** means a drug or other substance identified under 21 U.S.C. Section 812 (c).

**“Corrective action plan (CAP)”** means a written improvement plan describing activities and timelines developed to correct identified areas of non-compliance, including directives from the Kentucky Department of Education, specifying actions to be taken to fulfill a legal obligation.

**“Day”** means calendar day unless otherwise indicated as business day or school day.

**“Deaf-Blindness”** means concomitant hearing and visual impairments that have an adverse effect on the child’s education performance, the combination of which causes severe communication and other developmental and educational needs that cannot be accommodated in special education programs solely for children with deafness or children with blindness, unless supplementary assistance is provided to address educational needs resulting from the two disabilities.

**“Deficiency”** means non-compliance.

**“Destruction”** means physical destruction or removal of personal identifiers from records so that the information is no longer personally identifiable and as a means for protection against improper or unauthorized use.

**“Developmental delay (DD)”** means that a child within the ages of three (3) through eight (8) has not acquired skills, or achieved commensurate with recognized performance expectations for his age in one or more of the following developmental areas: cognition,

communication, motor development, social-emotional development, or self-help/adaptive behavior. Developmental delay includes a child who demonstrates a measurable, verifiable discrepancy between expected performance for the child's chronological age and current level of performance. The discrepancy shall be documented by:

- (a) scores of two (2) standard deviations or more below the mean in one of the areas listed above as obtained using norm-referenced instruments and procedures;  
or
- (b) scores of one and one-half standard deviations below the mean in two (2) or more of the areas listed above using norm-referenced instruments and procedures;  
or
- (c) the professional judgment of the ARC that there is a significant atypical quality or pattern of development. Professional judgment shall be used only where normed scores are inconclusive and the ARC documents in a written report the reasons for concluding that a child has a developmental delay.

**“Directory Information”** means the student's name; address; telephone listing; date and place of birth; participation in school recognized activities and sports; weight and height of members of athletic teams; dates of attendance; awards received; major field of study; and the most recent previous educational agency or institution attended by the student; contained in the educational records in the custody of the public schools.

**“Educational Performance”** means the total involvement of a child in the school environment; thus it includes social and emotional development, communication skills, and participation in classroom activities, as well as academic performance. Therefore, educational performance means acquiring, developing, understanding, or applying knowledge or skills needed for academic performance or social competence.

**“Education Records”** means records as defined in the Family Educational Rights and Privacy Act of 1974, 20 U.S.C. Section 1232(g). "Education records means those records that are directly related to a student, and maintained by an educational agency or institution."

**“Emotional-behavioral disability (EBD)”** means that a child, when provided with interventions to meet instructional and social-emotional needs, continues to exhibit one or more of the following, when compared to the child's peer and cultural reference groups, across settings, over a long period of time and to a marked degree:

- (a) severe deficits in social competence or appropriate behavior which cause an inability to build or maintain satisfactory interpersonal relationships with adults or peers;
- (b) severe deficits in academic performance which are not commensurate with the student's ability level and are not solely a result of intellectual, sensory, or other health factors but are related to the child's social-emotional problem;
- (c) a general pervasive mood of unhappiness or depression; or
- (d) a tendency to develop physical symptoms or fears associated with personal or school problems.

This term does not apply to children who display isolated (not necessarily one)

inappropriate behaviors that are the result of willful, intentional, or wanton actions unless it is determined through the evaluations process that the child does have an emotional-behavioral disability.

**“Enforcement”** means the Kentucky Department of Education takes steps to ensure federal and state special education requirements are implemented.

**“Extended school year services (ESY)”** means specially designed instruction and related services that are provided to a child with a disability beyond the normal school year in accordance with the child’s IEP at no cost to the parents.

**“Free appropriate public education (FAPE)”** means special education and related services that:

- (a) are provided at public expense, under public supervision and direction, and without charge;
- (b) meet the standards of the Kentucky Department of Education included in 707 KAR Chapter 1 (special education regulations) and the Program of Studies, 704 KAR 3:303, as appropriate;
- (c) include preschool, elementary school, or secondary school education in the state; and
- (d) are provided in conformity with an individual education program (IEP) that meets the requirements of 707 KAR 1:320 (Chapter III, Child Find, Evaluation and Reevaluation).

**“Hearing impairment (HI)”** means that a child has a hearing loss that has an adverse effect on the child’s educational performance, whether permanent or fluctuating, ranging from mild to profound (a loss of 25 decibels (dB) or greater exists through speech frequencies of 500, 1000, and 2000 Hertz (Hz) in the better ear), and of a degree that the child is impaired in the processing of linguistic information through hearing, with or without amplification.

**“Home school”** means for purposes of 707 KAR Chapter 1 (special education regulations) only, a private school primarily conducted in one's residence.

**“IDEA”** means the Individuals with Disabilities Education Act, 20 U.S.C. Section 1400 et.seq., as amended.

**“Interim Alternate Education Setting (IAES)”** means any placement setting that is identified as a unilateral disciplinary response to weapons or drug violations, or any setting approved by a hearing officer or judge when a situation of substantial injury is at issue.

**“Independent educational evaluation”** means an evaluation conducted by a qualified examiner who is not employed by the LEA responsible for the education of the child in question.

**“Individual education program (IEP)”** means a written statement for a child with a disability that is developed, reviewed and revised in accordance with 707 KAR 1:320 (Chapter V, IEP).

**“Individual Evaluation”** means evaluation procedures that are used to determine whether or not a child has a disability must be administered selectively and individually to a child, and thus may not include tests administered to or used with all children in a grade, class or school.

**“KLEA Representative”** means an individual assigned to represent the local educational agency.

**“Local educational agency (LEA)”** means a public local board of education or other legally constituted public authority that has either administrative control or direction of public elementary or secondary schools in a school district or other political subdivision of the Commonwealth. LEA also means any other public institution or agency, including the Kentucky School for the Blind (KSB) and the Kentucky School for the Deaf (KSD), that is charged by state statute with the responsibility of providing educational services to children with disabilities.

**“Mental disability”** means that a child has one of the following:

- (a) a mild mental disability (MMD) in which:
  - 1. cognitive functioning is at least two (2) but no more than three (3) standard deviations below the mean;
  - 2. adaptive behavior deficit is at least two (2) standard deviations below the mean;
  - 3. a severe deficit exists in overall academic performance including acquisition, retention, and application of knowledge; and
  - 4. is typically manifested during the developmental period; or
- (b) a functional mental disability (FMD) in which:
  - 1. cognitive functioning is at least three (3) or more standard deviations below the mean;
  - 2. adaptive behavior deficits are at least three (3) or more standard deviations below the mean;
  - 3. a severe deficit exists in overall academic performance including acquisition, retention, and application of knowledge; and
  - 4. is typically manifested during the developmental period.

**“Monitoring”** means gathering and reviewing information to determine if a project or program meets state and federal special education requirements including the implementation of corrective action plans.

**“Multiple disabilities (MD)”** means concomitant impairments that have an adverse effect on the child’s educational performance (e.g., mental disability-blindness, mental disability-orthopedic impairment, etc.), the combination of which causes severe educational needs that cannot be accommodated in special education programs solely for

one of the impairments. Multiple disabilities does not mean deaf-blindness. "A pupil is not considered to have a multiple disability if the adverse effect on educational performance is solely the result of deaf-blindness or the result of speech or language disability and one (1) other disabling condition."

{KRS 157.200 (1)(h)}

**"Native language"** means, if used in reference to an individual of limited English proficiency, the following:

- (a) the language normally used by that individual, or, in the case of a child, the language normally used by the parents of the child;
- (b) in all direct contact with a child (including evaluation of the child), the language normally used by the child in the home or learning environment; or
- (c) for an individual with deafness or blindness, or for an individual with no written language, the mode of communication that is normally used by the individual (e.g., sign language, Braille, or oral communication).

**"Orthopedic impairment (OI)"** means a severe orthopedic impairment that adversely affects a child's educational performance. The term includes an impairment caused by a congenital anomaly (e.g., clubfoot, absence of some member, etc.), an impairment caused by disease (e.g., poliomyelitis, bone tuberculosis, etc), and an impairment from other causes (e.g., cerebral palsy, amputations, and fractures or burns that causes contractures).

**"Other health impairment (OHI)"** means having limited strength, vitality, or alertness, including a heightened alertness to environmental stimuli, that results in limited alertness with respect to the educational environment, that:

- (a) is due to a chronic or acute health problem e.g., as acquired immune deficiency syndrome, asthma, attention deficit disorder or attention deficit hyperactivity disorder, diabetes, epilepsy, a heart condition, hemophilia, lead poisoning, leukemia, nephritis, rheumatic fever, sickle cell anemia, or tuberculosis; and
- (b) adversely affects a child's educational performance.

**"Parent"** means:

- (a) a natural or adoptive parent of a child;
- (b) a guardian but not the state if the child is a ward of the state;
- (c) a person acting in the place of a parent (e.g., a grandparent or stepparent with whom the child lives) or a person who is legally responsible for the child's welfare;
- (d) a surrogate parent who has been appointed in accordance with 707 KAR 1:340, Section 7, (Chapter VII, Procedural Safeguards); or
- (e) a foster parent if the natural parents' authority to make educational decisions on the child's behalf has been extinguished and the foster parent has an ongoing, long-term parental relationship with the child, is willing to make the educational decisions required of parents under 707 KAR Chapter 1 (special education regulations), and has no interest that would conflict with the interests of the child.

**“Participating agency”** means a state or local agency other than the LEA that is financially and legally responsible for providing transition services to a child with a disability.

**“Personally identifiable information”** means information that includes the name of the child, the child’s parents, or other family member, the address of the child, a personal identifier, including the child’s social security number or student number, or a list of personal characteristics or other information that would make it possible to identify the child with reasonable certainty.

**“Private school children with disabilities”** means children with disabilities enrolled by their parents in private schools and not children with disabilities enrolled in private schools upon referral by a LEA

**“Public expense”** means that the LEA either pays for the full cost of the services to meet the requirements of 707 KAR Chapter 1 or ensures that the services are otherwise provided at no cost to the parent. Nothing in these regulations shall relieve an insurer or similar third party from an otherwise valid obligation to provide or to pay for services provided to a child with a disability.

**“Qualified personnel”** means personnel who meet the statutory or regulatory qualifications for each respective profession currently applicable in this state.

**“Reasonable efforts to obtain voluntary compliance”** means active and ongoing efforts by the Kentucky Department of Education through technical assistance and negotiation to arrive at an acceptable corrective action plan and follow through on an agreed upon corrective action plan.

**“Related services”** means transportation and such developmental, corrective, or supportive services as are required to assist a child with a disability to benefit from special education. It includes speech-language pathology and audiology services, psychological services, physical and occupational therapy, recreation including therapeutic recreation, early identification and assessment of disabilities in children, counseling services including rehabilitation counseling, orientation and mobility services, and medical services for diagnostic or evaluation purposes. Related services also means school health services, social work services in school, and parent counseling and training.

**“Sanctions”** means actions (e.g., technical assistance, consultation, or training, among others) taken by the Kentucky Department of Education in response to an LEA’s failure to comply with the required standards in state and federal laws and administrative regulations.

**“School day”** means any day, including a partial day, in which children are in attendance at school for instructional purposes. School day means the same thing for all children in school, including children with or without disabilities.



**“Service Plan”** means a plan developed for private school students that meets the requirements of an IEP under 707 KAR Chapter 1 (special education regulations) with respect to the services provided; and is developed, reviewed, and revised consistent with the requirements to develop, review, and revise IEPs. The Service Plan contains what services will be provided, how and where the services will be provided, and how the services provided will be evaluated.

**“Special education”** means specially designed instruction, at no cost to the parents, to meet the unique needs of the child with a disability including instruction in the classroom, in the home, in hospitals and institutions, and in other settings. Special education means speech-language pathology services, (if the service is considered special education rather than a related service), travel training, and vocational education.

**“Special education mentor”** means individuals with exceptional expertise, experience, and certification in special education administration or teaching granted the authority described in KRS 157.197, Kentucky Special Education Mentor Program.

**“Specially-designed instruction”** means adapting as appropriate the content, methodology, or delivery of instruction to address the unique needs of the child with a disability and to ensure access of the child to the general curriculum included in the Program of Studies, 704 KAR 3:303.

**“Specific learning disability (LD)”** means a disorder in one or more of the basic psychological processes involved in understanding or in using language, spoken or written, that may manifest itself in diminished ability to listen, think, speak, read, write, spell, or to do mathematical calculations, including conditions like perceptual disabilities, brain injury, minimal brain dysfunction, dyslexia, and developmental aphasia. Specific learning disability does not include learning problems that are primarily the result of visual, hearing, or motor disabilities, of mental disability, of emotional disturbance, or of environmental, cultural, or economic disadvantage.

**“Speech or language impairment”** means a communication disorder, including stuttering, impaired articulation, a language impairment, a voice impairment, delayed acquisition of language, or an absence of language, that adversely affects a child’s educational performance.

**“Supplementary aids and services”** means aids, services, and other supports that are provided in regular education classes or other education-related settings to enable a child with disabilities to be educated with nondisabled children to the maximum extent appropriate in accordance with 707 KAR 1:350 (Chapter VIII, Placement Decisions).

**“Transition Services”** means a coordinated set of activities for a child with a disability that:

- (a) is designed within an outcome-oriented process (i.e., a process that outlines how a student will achieve goals consistent with the general curriculum, as appropriate), that promotes movement from school to post-school activities,

including postsecondary education, vocational training, integrated employment (including supported employment), continuing and adult education, adult services, independent living, or community participation;

(b) is based on the individual student's needs, taking into account the child's preferences and interests; and

(c) includes:

1. instruction;
2. related services; and
3. community experiences;
4. the development of employment and other post-school adult living objectives; and
5. if appropriate, acquisition of daily living skills and functional vocational evaluation.

**“Traumatic brain injury (TBI)”** means an acquired injury to the brain caused by an external physical force, resulting in total or partial functional disability or psychosocial impairment, or both, that adversely affects a child's educational performance. Traumatic brain injury does not mean brain injuries that are congenital or degenerative, or brain injuries induced by birth trauma. Traumatic brain injury means open or closed head injuries resulting in impairments in one or more areas, including:

- (a) cognition;
- (b) language;
- (c) memory;
- (d) attention;
- (e) reasoning;
- (f) abstract thinking;
- (g) judgment;
- (h) problem-solving;
- (i) sensory, perceptual, and motor abilities;
- (j) psychosocial behavior;
- (k) physical functions;
- (l) information processing; and
- (m) speech.

**“Travel training”** means instruction to children with significant cognitive disabilities and any other children with disabilities, as appropriate, to enable them to develop an awareness of the environment in which they live and to learn the skills necessary to move effectively and safely from place to place within that environment (e.g., school, home, work and community).

**“Visual impairment (VI)”** means a child has a vision loss, even with correction, as follows:

- (a) visual acuity even with prescribed lenses that is 20/70 or worse in the better eye; or
- (b) visual acuity that is better than 20/70 and the child has one of the following conditions:

1. a medically diagnosed progressive loss of vision;
  2. a visual field of 20 degrees or worse;
  3. a medically diagnosed condition of cortical blindness; or
  4. a functional vision loss;
- (c) requires specialized materials, instruction in orientation and mobility, Braille, visual efficiency, or tactile exploration; and
- (d) has an adverse effect on the child's educational performance.

**“Ward of the state”** means a child who has been committed to the Cabinet for Families and Children or the Department of Juvenile Justice through a legal process, whether the commitment is voluntary or nonvoluntary and the natural parental rights have been terminated.

**“Weapon”** means dangerous weapon as defined in 18 U.S.C. Section 930 (g) (2). A weapon, in accordance with that definition, “is a device, instrument, material or substance, animate or inanimate, that is used for, or is readily capable of, causing death, or serious bodily injury, except that such term does not include a pocket knife with a blade of less than 2 1/2 inches in length.”

**“Withholding”** means no further payment of specified funds are made to an approved recipient.